

## **SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS**

OMB CONTROL NUMBER 3038-NEW

### Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

CFTC Regulation 30.10 allows persons located and doing business outside the U.S., who are subject to a comparable regulatory framework in the country in which they are located, to seek an exemption from the application of certain of the Part 30 regulations. In essence, a petitioner under Regulation 30.10 must present, with particularity, the factual basis for a finding of comparability and the reasons why the policies and purposes of the Commission's regulatory program are met, notwithstanding any differences of degree or kind in the petitioner's regulatory program. The petitioner must set forth how the laws in its jurisdiction are comparable to U.S. laws with regards to: (1) registration, authorization or other form of licensing, fitness review or qualification of persons through which customer orders are solicited and accepted; (2) minimum financial requirements for those persons that accept customer funds; (3) protection of customer funds from misapplication; (4) recordkeeping and reporting requirements; (5) minimum sales practice standards, including disclosure of the risks of futures and options transactions and, in particular, the risk of transactions undertaken outside the jurisdiction of domestic law; (6) compliance; and (7) information-sharing.

Currently, there are 13 foreign entities<sup>1</sup> (two regulators and 11 futures exchanges) that have a Regulation 30.10 exemption some of which date back to the late eighties, early nineties. Consequently, the Commission's Division of Clearing and Intermediary Oversight (DCIO) would like to embark upon a program whereby each year, DCIO sends out a questionnaire to exemption recipients inquiring as to material and other relevant changes that impacted our could impact the fundamentals for which exemptive relief was granted in the first place.

2. Indicate how, by whom, and for what purpose the data would be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The collection will be conducted through a questionnaire (see attachment) inquiring on the seven comparability standards listed above among other relevant questions. The questionnaire will be conducted by DCIO which is the Division responsible for recommending to the Commission whether exemptive relief should be granted in the

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<sup>1</sup> The 13 foreign entities are represented by the following jurisdictions: the United Kingdom, Australia, Brazil, Germany, Canada, France, Spain, New Zealand, Singapore, Taiwan, and Japan.

first place. The purpose is to: (1) obtain updated information regarding regulatory changes and market developments; (2) update relevant documents within the Division particularly in light of some of the older outstanding orders and; (3) establish lines of communication with the Commission's counterparts in foreign jurisdictions.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

The collection of information will involve the submission of answers by means of electronic mail in order to facilitate as many responses as possible through the most efficient means.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

The 13 outstanding Regulation 30.10 exemptive orders are to different foreign futures exchanges or foreign regulators all governed by different laws. Thus, there is no duplication in the information requested or to be received.

5. If the collection of information involves small business or other small entities (Item 5 of OMB Form 83-I), describe the methods used to minimize burden.

Not applicable.

6. Describe the consequence to the Federal Program or policy activities if the collection were conducted less frequently as well as any technical or legal obstacles to reducing burden.

U.S. customers are the primary beneficiaries of frequent disclosure by Regulation 30.10 exemptive recipients as such disclosure would bring to light any legal change or market change that could have the potential of impacting U.S. customers' transactions abroad. By requiring annual reporting, the Commission will be in a better position to evaluate (or re-evaluate) whether the foreign jurisdiction's laws are still comparable to U.S. laws and thus serve as adequate safeguards for U.S. customers.

7. Explain any special circumstances that require the collection to be conducted in a manner:
  - requiring respondents to report information to the agency more often than quarterly;

Not applicable.

- requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;

Not applicable.

- requiring respondents to submit more than an original and two copies of any document;

Not applicable.

- requiring respondents to retain records other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;

Not applicable.

- in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;

Not applicable.

- requiring the use of a statistical data classification that has not been reviewed and approved by OMB;

- that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or

Not applicable.

- requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

It is unknown at this time if proprietary trade secrets, or other confidential information will be submitted. If and when such information is submitted, Freedom of Information Act regulations, 17 CFR Part 145, will ensure confidentiality.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice required by 5 CFR 1320.8(d),

soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

The notice was published on February 10, 2010 in 75 FR 6637. Only one comment was received. The comment related to the fact that Taiwan should not be considered a foreign entity or foreign jurisdiction or considered to be located outside the US, territories or possessions.

The comment was reviewed and we have determined that no action needs to be taken.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping disclosure, or reporting format (if any, and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years - even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

The proposed questionnaire will be published in the *Federal Register* for comment. All comments will be carefully considered before sending the questionnaire to the Regulation 30.10 recipients.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

Not applicable.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulations, or agency policy.

The Commission has provided no assurance of confidentiality above that provided by the agency's Freedom of Information Act regulations, 17 C.F.R. Part 145.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of

the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

Part 30 does not require the giving of sensitive information, as that term is used in Question 11.

12. Provide estimates of the hour burden of the collection of information. The Statement should:

- Indicate the number of respondents, frequency of response, annual hour burden and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than ten) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.

Total number of respondents = 13;

Frequency of response = annual;

Annual hour burden = 13 (13 questions x 1 approximate hour per question\*).

Aggregate annual hour burden = 169 (13 respondents x 13 annual hour burden).

\*Note that some jurisdictions that obtained Regulation 30.10 relief have upheld their obligation to continuously provide the Commission with updates as their laws or market conditions have changed. Others however have not. Consequently, for those jurisdictions who have already fulfilled their obligation, the per hour burden could be less than one hour while those jurisdictions that have been lax in providing the Commission with information could have a per hour burden of one hour.

- If the request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.

Not applicable.

- Provide estimates of annualized cost to respondents for the hours burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.

If this requirement is completed by industry professionals with an average hourly salary of \$20.00 per hour\*, the total estimated annual costs associated with reporting would be

\$260.00 per respondent and an aggregate annual cost of \$3,380 (\$20.00 x 169 (aggregate annual hour burden)).

\* Assuming there is no variation in average hourly salary of professionals in the 13 different jurisdictions and all average hourly salary is calculated in U.S. dollars.

13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

- The cost estimate should be split into two components; (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major costs factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software, monitoring, sampling, drilling and testing equipment, and record storage facilities.
- If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate, agencies may consult with a sample of respondents (fewer than ten), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.
- Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

No capital or start-up costs are anticipated.

14. Provide estimates of the annualized costs to the Federal Government. Also provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing and support staff), and any other expense that would not have been

incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.

With respect to the Commission, the costs associated with the collection described herein are inseparable from the costs of running the foreign futures and foreign options program as a whole. There are no expenses that are exclusively attributable to the paperwork burden; the collection facilitates the Commission's management of the Part 30 program.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.

Not applicable.

16. For collection of information whose results are planned to be published for statistical use, outline plans for tabulation, statistical analysis, and publication. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

Not applicable.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

Not applicable.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.

No exceptions exist.